



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

MAY 31 2011

Trais Norris
Senior Environmental Planner
California Department of Transportation
2015 East Shields Avenue, Suite 100
Fresno, CA 93726

Subject: Draft Tier 1 Environmental Impact Statement for the State Route 180 Westside
Expressway Route Adoption Study (CEQ #20110085)

Dear Mr. Norris:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document. Our enclosed detailed comments were prepared pursuant to the NEPA, Council on Environmental Quality regulations (40 CFR Parts 1500-1508) and our NEPA review authority under Section 309 of the Clean Air Act. The State of California has assumed responsibilities under NEPA for this project pursuant to the Memorandum of Understanding between the Federal Highway Administration (FHWA) and the California Department of Transportation (Caltrans) Concerning the State of California's Participation in the Surface Transportation Project Delivery Pilot Program.

As described in the Draft Programmatic (Tier 1) Environmental Impact Statement (PEIS), this project aims to identify a corridor for the future expansion and/or relocation of State Route (SR) 180 in order to provide a reliable east-west connection between Fresno and Interstate 5. Currently, SR 180 terminates in the city of Mendota, approximately 18 miles from Interstate 5. Three alternatives are evaluated, including expansion of existing SR 180 (Alternative 1) and relocation of SR 180 to the north (Alternatives 2 and 3). The Draft PEIS does not identify a preferred alternative.

Based on our review of the Draft PEIS, we have rated the document and corridor alternatives as Environmental Objections-Insufficient Information (EO-2; see enclosed Summary of EPA Rating Definitions). The basis for our rating is: (1) extensive impacts to aquatic resources; (2) insufficient analysis of indirect and cumulative impacts of the expressway to resources of concern; and (3) impacts to agriculture as a result of farmland fragmentation. The Draft PEIS appears to exclude from analysis the indirect impacts of building a new expressway through areas that previously had little or no access, nor does it discuss opportunities for discouraging induced development along these new corridors.

We appreciate the opportunity to discuss our concerns via teleconference with Caltrans and the U.S. Army Corps of Engineers on May 5, 2011, and we look forward to resolving these issues

during future coordination on the SR 180 Westside Expressway project, including a site visit and resource agency coordination meeting scheduled for this June. We look forward to jointly visiting potential impact areas along the future corridors and exploring opportunities for avoidance, minimization, and mitigation of impacts.

Given the extent of potential impacts to aquatic resources (54 to 84 acres), we strongly recommend Caltrans reconsider the decision not to coordinate on this project pursuant to the NEPA/Clean Water Act Section 404 Integration Process MOU (NEPA/404 MOU, attached). Section VI of the NEPA 404/MOU, signed by Caltrans, specifically outlines the process for NEPA/404 integration on Tier 1 evaluations. We have twice recommended that this project work through the NEPA/404 MOU process (EPA letters of July 11, 2008, and November 18, 2009), and request that Caltrans convene a meeting of the NEPA/404 MOU signatory agencies to initiate this process for the remainder of the project timeline. We recommend that Caltrans initiate the next steps in the NEPA/404 MOU process, as modified for Tier 1 projects: 1) select the corridor(s) most likely to contain the least environmentally damaging practicable alternative (LEDPA), the only alternative that can be permitted under CWA Section 404, and 2) determine the general mitigation framework for the project. We offer our assistance with these NEPA/404 MOU checkpoints both now (during the programmatic Tier 1 EIS process) and during future project level environmental analyses.

We appreciate the opportunity to review this Draft PEIS. When the Final PEIS is released for public review, please send one hard copy and one copy on disc to the address above (mail code: CED-2). If you have any questions, please contact me at 415-972-3843 or Clifton Meek, the lead reviewer for this project. Clifton can be reached at 415-972-3370 or meek.clifton@epa.gov.

Sincerely,



Enrique Manzanilla, Director
Communities and Ecosystems Division

Enclosures: Summary of EPA Rating Definitions
EPA's Detailed Comments
NEPA/Clean Water Act Section 404 Integration Process MOU (2006)

Cc via email: Bob Pavlik, California Department of Transportation
Leah Fisher, U.S. Army Corps of Engineers
Jen Schofield, U.S. Fish and Wildlife Service
Thomas Leeman, U.S. Fish and Wildlife Service
Laura Peterson Diaz, California Department of Fish and Game
Jeffrey R. Single, California Department of Fish and Game

EPA'S DETAILED COMMENTS ON THE DRAFT PROGRAMMATIC TIER 1 ENVIRONMENTAL
IMPACT STATEMENT FOR THE STATE ROUTE 180 WESTSIDE EXPRESSWAY ROUTE
ADOPTION STUDY

Impacts to Aquatic Resources

The goal for this Tier 1 Programmatic Environmental Impact Statement (PEIS) is to identify a corridor for future right-of-way preservation. The Tier 2 Project-level EIS will identify specific alignments for the State Route 180 Westside Expressway (Expressway) within the corridor(s) identified for further analysis in Tier 1. After Tier 2 project approval, but before project construction, the project proponent will need to obtain a Clean Water Act (CWA) Section 404 individual permit from the Corps.

The CWA Section 404(b)(1) Guidelines (Guidelines) are binding, substantive regulations that restrict CWA Section 404 permits to the "least environmentally damaging practicable alternative (LEDPA)." The Corps cannot grant a CWA Section 404 permit to a preferred project-level alternative that is not the LEDPA; therefore, it is critical that the LEDPA, and the route most likely to contain the LEDPA, is not prematurely eliminated during the Tier 1 NEPA review.

Given the proximity to important aquatic and biological resources, including Fresno Slough, the San Joaquin River, Mendota Pool, the Mendota Wildlife Area, and the Kerman and Alkali Sink Ecological Reserves, future Tier 2 project-level projects are likely to involve the discharge of dredged or fill material into jurisdictional wetlands and waterways. Section 3.3.2 of the Draft PEIS reviews impacts to waters for each Alternative corridor, estimating the acreage of potential impacts to wetlands and waters in the range of 54 to 84 acres. While we understand that actual impacts at the project level will likely be less than these estimates, the Draft EIS does not provide commitments regarding specific potential avoidance and minimization techniques that could be employed to reduce the acreage of impacts within each corridor. Furthermore, the Draft PEIS does not sufficiently describe potential activities proposed relevant to these resources and what functions would potentially be affected with each alternative. As such, the Draft PEIS does not present enough information to ensure that a corridor chosen at the Tier 1 phase would ultimately contain the LEDPA.

Recommendations:

- The Final PEIS should disclose for each Alternative:
 - (1) name of each crossing,
 - (2) aquatic resource type (concrete channel, open water, riparian habitat),
 - (3) type of activity proposed (viaduct, box culvert, arched culvert),
 - (4) acreage of waters potentially impacted,
 - (5) the effect to aquatic resource function from the proposed activity, and
 - (6) potential avoidance/minimization measures that could be employed at project level.

These should be summarized both in the text and in a table format for reader clarity.

- Include in the Final PEIS a description of which floodplain areas would likely be spanned and which would be avoided through elevation of roadway structures. Include a map of spanned/elevated areas, an estimate of spanned/elevated road distances, and a quantification of resource impacts that could be avoided by a viaduct or other spanning-type structure.
- Include in the Final PEIS a commitment to use, for future project-level analyses, newer technology culverts and less damaging culverts such as large bottomless or arched culverts and a commitment to span vernal pool areas and major waterway crossings. While newer techniques to reduce impacts may be available in the future when the projects are ultimately implemented, it is appropriate to commit to best available technologies at this time (along with an estimate of the resources that can be avoided by integrating these techniques).

San Joaquin River Restoration

Given its proximity to the San Joaquin River and Mendota pool, EPA is concerned about the potential direct and indirect impacts Alternative 3 would have on the ongoing restoration efforts along this reach of the San Joaquin River. Restoration efforts include integration and restoration of floodplain habitat that appears to be within the Alternative 3 corridor. Other aspects of the restoration could include modifications of the river channel, setting back of levees, and relocation of existing infrastructure, all of which would potentially be impacted by a future project within the Alternative 3 corridor.

Recommendations:

- The Final PEIS should discuss potential project impacts on restoration efforts along the San Joaquin River and detail any coordination with the Bureau of Reclamation and Department of Water Resources regarding future alignments in proximity to the River. The Final PEIS should include a specific commitment to avoid any actions that would negatively affect long-term restoration of the San Joaquin River. Information on restoration activities can be found at <http://www.restoresjr.net>.

Integration of Clean Water Act and National Environmental Policy Act Requirements

The Draft PEIS estimates that the proposed project will affect 54 to 84 acres of aquatic resources within the project corridor, as assessed at the programmatic scale. It is highly likely that actual impacts to waters of the United States from a project built within any of the corridors assessed will be at least 5 acres. Therefore, this project meets the criteria for coordination under the April 2006 *National Environmental Policy Act and Clean Water Action Section 404 Integration Process for Federal Aid Surface Transportation Projects in California Memorandum of Understanding* (NEPA/404 MOU), as modified for Tier 1 projects. The NEPA/404 MOU includes specific agreement points to assist in developing the EIS and involves active participation in meetings and document reviews and provides modifications to approach a tiered project. The goal of the modified NEPA/404 MOU

process is to ensure that Tier 1 decisions reflect careful consideration of the Guidelines. The Guidelines should be addressed as early as possible in the Tier 1 NEPA evaluation to eliminate the need to revisit decisions at the Tier 2 project-level that might otherwise conflict with CWA 404 permit requirements.

In our comments on the Notice of Intent (July 11, 2008), and again in our comments on Purpose & Need and Range of Alternatives (November 18, 2009), EPA requested that Caltrans initiate the NEPA/404 MOU integration process so that agreement points could be addressed as early as possible in the EIS process. Despite these requests, Caltrans decided not to initiate this process or review project impacts with the NEPA/404 MOU signatory agencies. EPA requests that Caltrans convene a meeting of the NEPA/404 MOU signatory agencies at this time to initiate the integration process for use through the remainder of the project timeline. The next steps in the process are the following: 1) select the corridor(s) most likely to contain the "least environmentally damaging practicable alternative (LEDPA)" and 2) determine the general mitigation framework for the project.

Recommendations:

- Convene a meeting of the EPA, U.S. Army Corps of Engineers, and other resource agencies at this time to initiate the integration process for use through the remainder of the project timeline.
- Engage all resource agencies in the identification of the route most likely to contain the LEDPA and general mitigation framework prior to publication of the Final PEIS.

Corridor(s) Most Likely to Contain the LEDPA

The Guidelines call for an analysis that compares the total impact – direct and secondary (indirect) – for each alternative. However, the Draft PEIS only includes direct impacts in the comparison of alternatives (e.g., Table 3.30). It is important to include indirect impacts in the alternatives analysis, because an alternative with fewer direct impacts may not necessarily be the LEDPA if its indirect impacts (including growth-related impacts) have greater environmental significance.

Recommendations:

- In order to be consistent with the Guidelines, the alternatives analysis should compare the alternatives using both direct and indirect impacts to aquatic resources. Specific recommendations are included below under **Indirect and Induced Growth Impacts**.

In addition, when evaluating differences between each corridor, it is important to consider resource avoidance options (e.g., elevated structures, bottomless culverts) that are available *within* each corridor, so as to not prematurely eliminate a potential LEDPA alignment.

Recommendations:

- Include planning-level avoidance commitments in the Final PEIS for each alternative that will be considered in the LEDPA assessment, such as arched (bottomless) culverts and elevated roadway structures or spans.

Finally, given the magnitude of potential resource impacts, particularly to aquatic resources and special status species, we recommend that Caltrans prepare a robust cumulative impacts analysis, appropriate for this programmatic scale, that will 1) determine the resource study area and baseline condition of each resource of concern, 2) assess reasonably foreseeable changes to environmental resources over time, and 3) identify potential landscape-level mitigation opportunities.

Recommendations:

- Prepare a thorough cumulative impact analysis to sensitive resources affected by the project. Specific recommendations are included below under **Cumulative Impacts Analysis**.

Mitigation Framework

In the Final PEIS, Caltrans should present the framework it will use to prepare the Tier 2 project-level detailed mitigation plan. The Tier 1 mitigation framework should describe the processes that Caltrans will use, and commitments it will make, to maximize opportunities for successful mitigation of environmental impacts associated with the construction and operation of the Expressway, including long-term mitigation and management of resources.

Recommendations:

Identify the following in the Final PEIS mitigation framework:

- Mitigation options available for creation, restoration, enhancement and preservation (e.g., land dedication, acquisition of conservation easements, mitigation banks).
- Potential mitigation sites.
- Opportunities to integrate with existing or planned conservation efforts (specifically address mitigation and/or expansion opportunities for the Kerman Ecological Reserve, Alkali Sink Reserve, and Mendota Wildlife Area).
- Potential for improvements to existing infrastructure to enhance aquatic system and wildlife use (e.g. spanning the Kerman Ecological Reserve to enhance wildlife movement/genetic exchange between north and south side of existing SR 180).
- Habitat types and approximate acres of impact. Special status species and critical habitat impacted. Discussion of any buffer areas and habitat linkages that will be adversely affected and replaced.
- Institutions and instruments (e.g., established maintenance endowments) for long-term management of mitigation sites.

Indirect and Induced Growth Impacts

The proposed State Route 180 Westside Expressway expansion/relocation will create a major new freeway in a rural area with abundant aquatic and biological resources. The Draft PEIS recognizes that the proposed project will have significant direct impacts on these resources, but makes an assumption (based upon current growth projections) that the project will not have significant growth-inducing impacts. However, the Draft PEIS also states that one of the major factors preventing unplanned growth is underdeveloped infrastructure. By providing new infrastructure, better transportation conditions, and easier access to currently undeveloped areas, the proposed project will remove several barriers to growth in the area. Further, the project will likely increase growth pressure on any areas near Expressway intersections that are not currently planned for development. As such, unplanned growth associated with the Expressway will likely have significant adverse impacts to sensitive aquatic and biological resources, as well as farmland. EPA is concerned that the Draft PEIS does not contain an estimate, by alternative, of indirect impacts to these resources, and does not sufficiently describe and commit to measures that avoid and minimize growth-inducing impacts (e.g. limiting the number of intersections, increased distances between intersections, etc).

The Draft PEIS also states that no significant distinction exists among corridor alternatives regarding potential growth impacts (Section 3.1.2) but does not provide data to support this conclusion. The potential growth-inducing impacts to resources from the alternatives could vary significantly, depending on the location of the corridor, the intersections, and their proximity to existing development. The northerly alternatives (Alternatives 2 and 3) provide access to largely undeveloped areas that currently have little or no planned growth. Alternative 1 (expansion of existing SR 180) provides additional access closer to existing and planned development. Corridor alternatives and intersection locations that direct growth along existing SR 180 rather than to the north would likely have fewer growth-related impacts to environmental resources and result in less farmland fragmentation.¹

Methodology and Scope of Analysis of Indirect Impacts

EPA believes that a more detailed qualitative analysis of indirect impacts to resources of concern should be provided in the Final PEIS. Caltrans has guidance, developed in concert with EPA and FHWA, regarding growth-inducing indirect impacts of projects. We recommend using this guidance to analyze the potential growth-inducing impacts of the project and to compare alternatives in the Final PEIS.

¹ For information on how the location of a transportation facility can influence and direct growth, see Chapter 5, Guidance for Preparers of Growth-related, Indirect Impact Analyses; National Cooperative Highway Research Program (NCHRP) Report 423A, Land Use Impacts of Transportation: A Guidebook; and NCHRP Report 466, Desk Reference for Estimating the Indirect Effect of Proposed Transportation Projects.

Recommendations:

- Prepare a robust qualitative analysis of indirect impacts -- including growth-related impacts to environmental resources and farmland fragmentation -- appropriate for assessment at the programmatic scale for each alternative, and provide supporting data, assumptions, and conclusions.
- Use the Caltrans' Growth Related Indirect Impacts Guidance to analyze the potential growth-inducing impacts of the project and to compare alternatives.²
- Include more detailed information on intersection locations and analyze both the direct and indirect impacts of proposed intersections.
- Commit to measures in the Final PEIS that avoid and minimize growth-inducing impacts such as limiting the number of intersections and increasing the distances between intersections.

Farmland Fragmentation

The Draft PEIS does not adequately address adverse impacts associated with farmland fragmentation from proposed alternatives and/or growth adjacent to the Expressway. All proposed Expressway alternatives move through a large landscape of prime and Williamson Act farmland. While the Draft PEIS states that a new expressway could have substantial indirect effects on access and viability of farmland, it makes no attempt to compare the indirect effects by alternative. Alternative 1, for example, would primarily run along existing roadway alignments, and thus would generally not cause further division of agricultural parcels that are already bisected by a roadway. Alternatives 2 and 3 would create entirely new roadway corridors, resulting in potential segmentation and isolation of agricultural lands, a common cause of indirect conversion of farmland. Growth-inducement could lead to further losses of farmland in the area. This is particularly concerning because the Fresno County General Plan lists long-term conservation of productive agricultural lands among its top priorities. As stated in the Draft PEIS, the county of Fresno has been ranked first among all California counties in farm and ranch production.

Recommendations:

- Include in the Final PEIS an assessment and comparison of impacts to potential farmland, including the number of parcels estimated to be bisected by each alternative corridor and resulting acreage of fragmented segments.

² Caltrans' Growth Related Indirect Impacts Guidance is available at http://www.dot.ca.gov/ser/Growth-related_IndirectImpactAnalysis/gri_guidance.htm

Cumulative Impacts Analysis

The Draft PEIS includes a brief qualitative discussion of cumulative impacts for each resource area. Given the history of habitat and farmland loss in Fresno County, we strongly recommend a more comprehensive analysis of cumulative impacts to resources of concern. We recommend using the Caltrans guidance on Cumulative Impact Analysis, co-developed by FHWA and U.S. EPA Region 9, as a framework.

The Council on Environmental Quality's regulations implementing NEPA define cumulative impacts as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." (40 CFR 1508.7)

For example, aquatic resources in Fresno County have been cumulatively affected by past actions and are likely to be adversely impacted by future development, including the proposed Expressway. Historical impacts on aquatic ecosystems include California's rapid population growth and agricultural expansion, resulting in losses of approximately 95% of the State's wetlands and up to 85% of the vernal pools. Holland estimated that more than 32,000 acres of vernal pool habitat had been lost in the San Joaquin Valley vernal pool region alone from the late 1980's until 1997. Through section 7 of the Endangered Species Act, the Sacramento Fish and Wildlife Office has reviewed projects converting more than 15,000 acres of vernal pool habitats in this region since 1994. The majority of the remaining vernal pool habitat is located on private lands and vulnerable to permanent removal. As such, the loss of any additional acreage of vernal pools, regardless of size, may be a significant cumulative impact to this resource.

We recommend a robust cumulative analysis at Tier 1 because it allows Caltrans and other stakeholders to identify early opportunities to avoid and minimize cumulative impacts to resources, and to identify landscape-level opportunities able to protect or restore environmental resources that may be cumulatively at risk.

Recommendations:

- Include a more robust cumulative impact analysis in the Final PEIS.³
- Identify potential landscape-level opportunities to avoid, minimize, and mitigate cumulative impacts to resources of concern, including those that are outside of Caltrans's authority. Specifically, in the Final PEIS, provide resource avoidance guidance for the preparation of the Tier 2 environmental documentation and identify measures that can be accomplished early, before the Tier 2 environmental review process is required.

³ The Caltrans Cumulative Impact Guidance is a useful reference and is available at http://www.dot.ca.gov/ser/cumulative_guidance/approach.htm

SUMMARY OF EPA RATING DEFINITIONS*

This rating system was developed as a means to summarize the U.S. Environmental Protection Agency's (EPA) level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the Environmental Impact Statement (EIS).

ENVIRONMENTAL IMPACT OF THE ACTION

"LO" (Lack of Objections)

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

"EC" (Environmental Concerns)

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

"EO" (Environmental Objections)

The EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

"EU" (Environmentally Unsatisfactory)

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

ADEQUACY OF THE IMPACT STATEMENT

Category "1" (Adequate)

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category "2" (Insufficient Information)

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category "3" (Inadequate)

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From EPA Manual 1640, Policy and Procedures for the Review of Federal Actions Impacting the Environment.

MEMORANDUM OF UNDERSTANDING

**Among the Federal Highway Administration,
California Department of Transportation,
United States Environmental Protection Agency,
United States Army Corps of Engineers,
United States Fish and Wildlife Service,
and the National Marine Fisheries Service**

**National Environmental Policy Act
and Clean Water Act Section 404
Integration Process for
Federal Aid Surface Transportation Projects
in California**

April, 2006

Table of Contents

Section I.	Introduction	2
Section II.	Overview	2
Section III.	The NEPA/404 Integration Process	4
Section IV.	Elevation Procedures and Other Project-Specific Dispute Resolution Tools ..	9
Section V.	Continuous Improvement.....	10
Section VI.	Tiering	11
Section VII.	Local Planning.....	12
Section VIII.	Legal Force and Effect/Modification	12
Section IX.	Signatures	Error! Bookmark not defined.

Appendix A. Dispute Resolution System

Appendix B. Composition of the Original Continuous Improvement Group

Acronyms and Definitions

Caltrans	California Department of Transportation
CIG	Continuous Improvement Group
COE	U.S. Army Corps of Engineers
CWA	Clean Water Act
EIS	Environmental Impact Statement
EPA	U.S. Environmental Protection Agency
FHWA	Federal Highway Administration
FWS	U.S. Fish and Wildlife Service
LEDPA	Least Environmentally Damaging Practicable Alternative
MOU	Memorandum of Understanding
NMFS	National Marine Fisheries Service
NEPA	National Environmental Policy Act
SAFETEA-LU	Safe, Accountable, Flexible, Efficient, Transportation Equity Act – A Legacy for Users

“Integration Project” – a project to which this MOU applies.

“Responding Agencies” – resource or regulatory agencies.

“Signatory Agencies” – FHWA, Caltrans, EPA, COE, FWS, and the NMFS.

“Tiering” – Tiering of an EIS refers to the process of addressing a broad, general program, policy or proposal in a programmatic EIS (Tier 1 EIS), and analyzing a narrower site-specific proposal, related to the initial program, plan or policy in a project-level Environmental Impact Statement (Tier 2 EIS).

“Transportation Agencies” – FHWA, Caltrans, and other agencies with transportation responsibility, such as local government if the latter are invited to participate as a Signatory Agency.

Section I. Introduction

This Memorandum of Understanding (MOU) merges the National Environmental Policy Act (NEPA) and Clean Water Act (CWA) Section 404 processes. It applies to federal aid surface transportation projects that have five or more acres of permanent impacts to waters of the United States and that require a NEPA Environmental Impact Statement (EIS). The consolidation of these processes will provide for more timely decision making while improving the overall quality of those decisions. The goal of this MOU is to foster agreement among the Signatory Agencies and to make it possible for the U.S. Army Corps of Engineers (COE) to more efficiently adopt the Federal Highway Administration's (FHWA) EIS.

In March 1994, Caltrans along with other state departments of transportation and federal agencies, executed the *Memorandum of Understanding – National Environmental Policy Act and Clean Water Act Section 404 Integration Process for Surface Transportation Projects in Arizona, California, and Nevada* (NEPA/404 MOU). In August 2000, the Signatory Agencies began working on a revised MOU that would apply only to federal aid surface transportation projects in California. Prompted by the 1999 FHWA reorganization, (which eliminated their regional level) and by changes in the COE's Nationwide Permit program that increased the number of Individual Permit applications being processed, the Mare Island Accord group (FHWA, Caltrans, and EPA) agreed to convene the Signatory Agencies to review and improve the NEPA/404 MOU. This document addresses these changes.

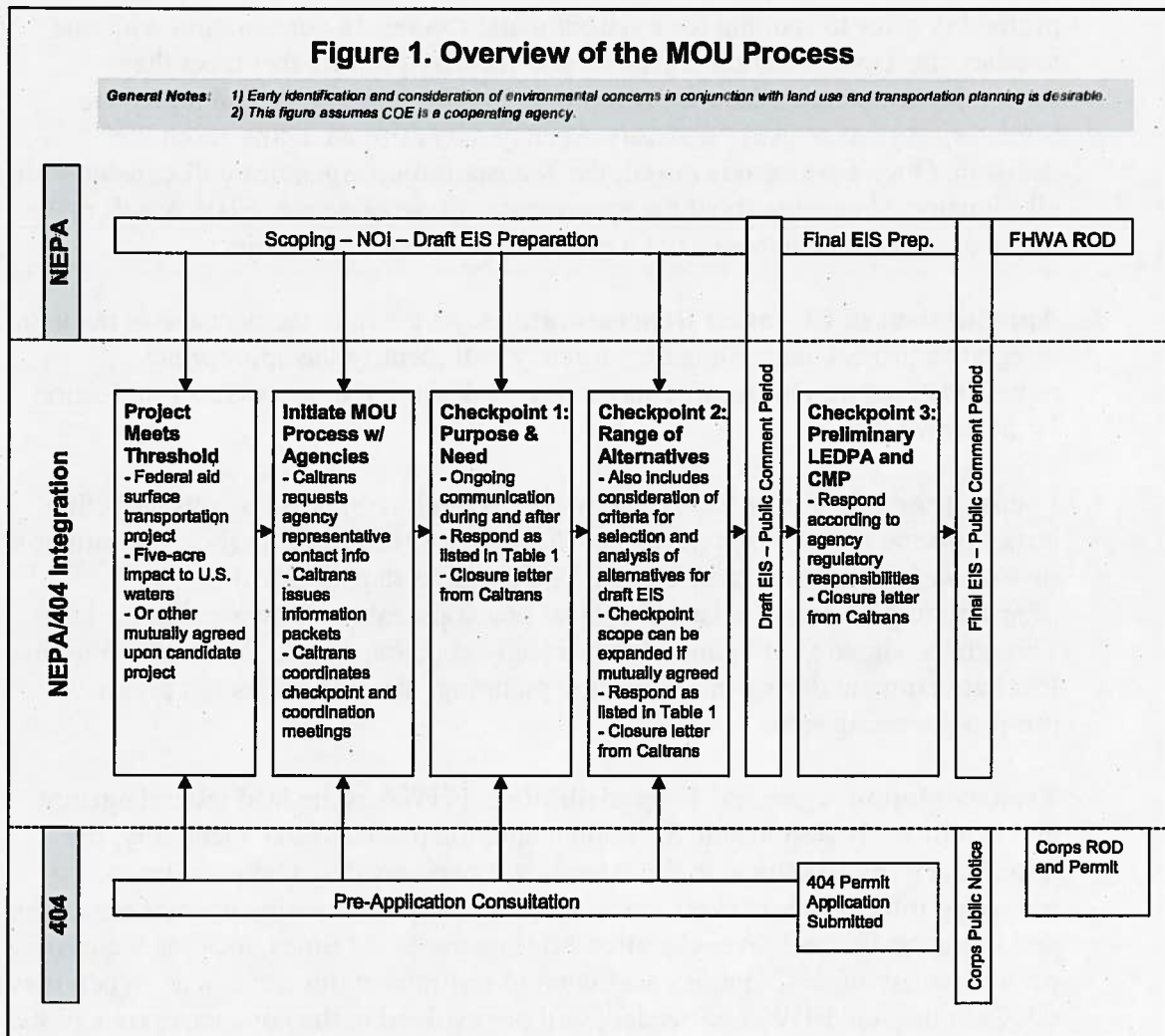
Section II. Overview

This NEPA/404 Integration MOU has the following components.

1. **Procedures (Section III).** This section outlines: a) the procedures Transportation Agencies follow in presenting information to Responding Agencies, b) procedures the Responding Agencies follow in replying to the information, and c) the Transportation Agencies' options once they receive the response. Basically, this section equates to the 'who, what, when and how' of the MOU. For a conceptual overview of this section, see Figure 1, *Overview of the MOU Process* and Figure 2, *Coordination of Checkpoint Process*.
2. **Dispute Resolution (Section IV).** This section describes the dispute resolution tools that can be used when the Transportation Agencies receive a negative comment, disagreement, or non-concurrence (defined below). The primary resolution tool in this agreement is the "mid-level elevation." The mid-level elevation is a management meeting that relies on a collaborative staff document, called the briefing paper, to frame the issues for resolution. Procedures for the mid-level elevation and other dispute resolution tools are also presented.
3. **Continuous Improvement (Section V).** The signatories to this MOU are committed to continuous improvement of the integration process and have established the Continuous Improvement Group (CIG). The CIG will propose amendments to this MOU as necessary and may also identify policy issues. The changes will be based on project-tracking information and surveys as described in

Section V.3. Trends from the mid-level elevations will be compiled by Caltrans representatives to provide information that may help identify needed changes.

4. **Tiering (Section VI).** The NEPA/404 integration process may be used for a Tier 1 EIS. Guidance on how to apply the NEPA/404 integration process to tiered projects is presented in this section.
5. **Planning (Section VII).** In Section VII, the Signatory Agencies agree on the importance of early identification and consideration of environmental concerns in conjunction with land use and transportation planning.
6. **Legal Force and Effect/Modification (Section VIII).** This final section provides detail on the legal import of this document. The MOU is meant to be flexible and should be improved, as necessary, by the CIG. At the project level, this MOU can be superseded by agreement of all the Signatory Agencies. Furthermore, the MOU merely sets a framework for collaboration; a signatory can opt out of the MOU or out of the integration process for a specific project. The signatories to this MOU encourage ongoing formal and informal collaboration not specifically described in this MOU.



Section III. The NEPA/404 Integration Process

This section lays out the Signatory Agencies' roles at each checkpoint, outlines the Transportation Agencies' options for resolving a negative comment, disagreement, or non-concurrence, and describes each of the three checkpoints. Figure 1, *Overview of the MOU Process* and Figure 2, *Coordination of Checkpoint Process* provide an overview of this section.

1. **Project Inclusion.** This NEPA/404 integration process applies to federal aid surface transportation projects that have five or more acres of permanent impacts to waters of the United States and that require preparation of an EIS. For purposes of evaluating whether this threshold will be met, possible growth-related impacts will not be included. If all the Signatory Agencies agree, the integration process may be applied to other projects. For instance, a project with fewer than five acres of impacts to waters of the United States may be included. In this document, a project to which this MOU applies is referred to as an "Integration Project."
2. **Process for Deciding on Inclusion.** The decision to apply the NEPA/404 integration process will be made as early in project development as possible, and

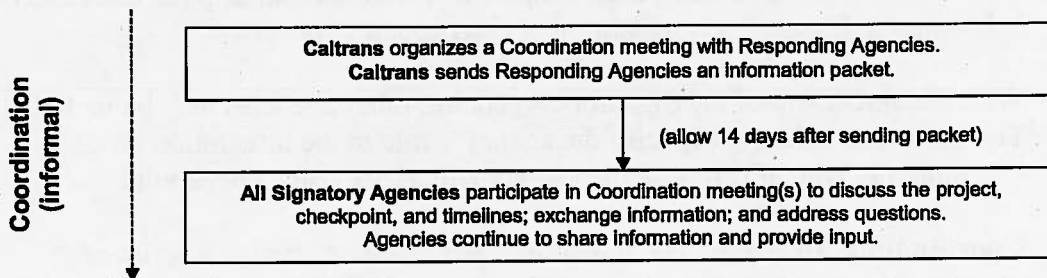
preferably prior to scoping for environmental studies. In consultation with one another, the Transportation Agencies will identify projects that meet the threshold, or that are otherwise recommended for the process, and notify the Signatory Agencies. Any Signatory Agency may raise concerns about the decision. Once a concern is raised, the Transportation Agencies will consult with all Signatory Agencies about the appropriate course of action. FHWA will make the final decision whether or not a project is an Integration Project.

3. **Appointment of Elevation Representatives.** At the time the decision is made to integrate a project, each Signatory Agency will identify the appropriate representatives for elevation. This process is described in more detail in Section IV of the MOU.
4. **Focus of the MOU.** The key difference between Integration Projects and other projects is the formal commitment of Signatory Agencies for early and continuous involvement in project development. The required steps fall within the programming-to-permit phase of project development, as shown in Figure 1. Though the signatories to this MOU strongly encourage early involvement with local government during transportation planning, the MOU does not prescribe pre-programming steps.
5. **Transportation Agencies' Responsibilities.** FHWA is the lead federal agency and is ultimately responsible for implementation of this MOU. Generally, the specific activities outlined in this section are performed by Caltrans; including preparing information packets, convening meetings, addressing agency responses, and initiating the mid-level elevation briefing paper. At times, local agencies may perform many of the functions attributed to Caltrans in this document. When they do, Caltrans, and FHWA as needed, will be involved in the advance review of the products and in the meetings.
6. **Checkpoints.** The integration process comprises three checkpoints, which punctuate ongoing coordination efforts. These checkpoints are:
 - (a) Purpose and Need;
 - (b) Identification of the Range of Alternatives to be Studied in the draft EIS; and
 - (c) Preliminary Least Environmentally Damaging Practicable Alternative (LEDPA) Determination and Conceptual Mitigation Plan.

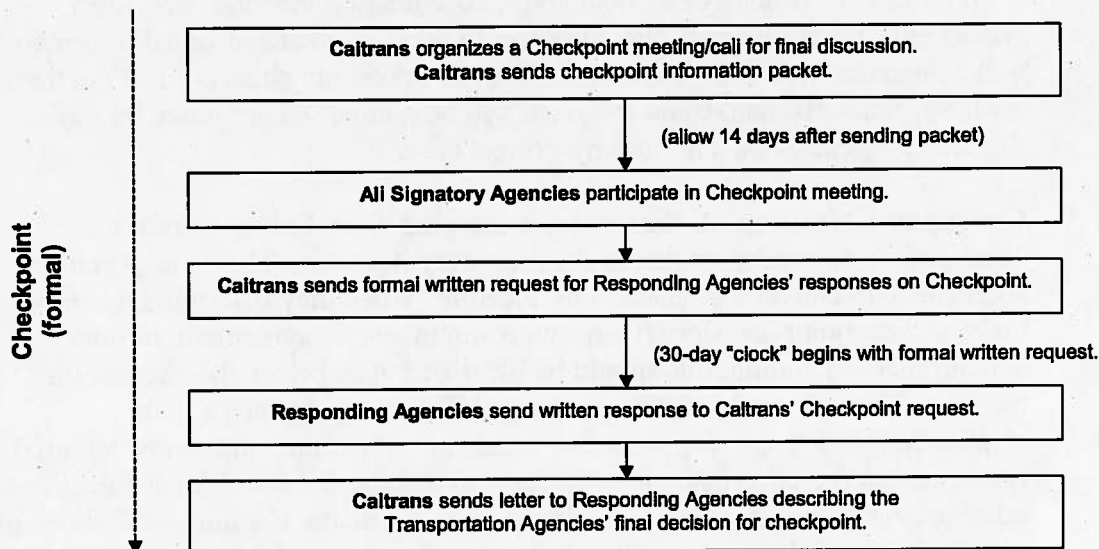
The range of alternatives checkpoint also includes consideration of the criteria used to select and analyze the range of alternatives to be studied in the draft EIS. If all the Signatory Agencies agree, they may expand these checkpoints. A diagram outlining the coordination and checkpoints process is below.

Figure 2. Coordination and Checkpoint Process

1. Start with informal Coordination process for information exchange and agency input:



2. When ready for formal Checkpoint process, proceed as follows:



If the response is:

- Concurrence _____ →
 - Agreement _____ →
 - Comment, with no request for elevation _____ →
- Transportation Agencies proceed to next checkpoint**

If the response is:

- Non-Concurrence _____ →
 - Disagreement _____ →
 - Comment, with request to elevate _____ →
- Caltrans initiates mid-level elevation¹**

3. See Figure A-1, Dispute Resolution Process, for detailed dispute resolution information.

¹ Caltrans may deny requests for mid-level elevation that are sent as part of a comment.

7. **Participants.** All Signatory Agencies may participate in the checkpoints. The level of participation by the agencies differs by agency and by checkpoint as described below and in Table 1, *Types of Response by Agency and Checkpoint*. The flow of information and decision points within each checkpoint are described below and in Figure 2, *Coordination of Checkpoint Process*.

With the agreement of the Signatory Agencies, other agencies may be included. The invitation letter will specify the agency's role in the integration process, including the type of response the agency will give at each checkpoint.

8. **Coordination Meetings.** The integration process may involve a series of coordination meetings to exchange information about the proposed project and potential impacts. While in-person meetings are preferred, they may occur by conference call. Among other objectives, coordination meetings provide an opportunity for the Responding Agencies to identify what additional information will be necessary to make a decision about an upcoming checkpoint. Timeframes for information exchange and response will be mutually determined by the Signatory Agencies on a project-by-project basis.
9. **Checkpoint Meetings.** A checkpoint is initiated when Caltrans sends a checkpoint information packet to the Signatory Agencies. The Transportation Agencies will convene a "checkpoint meeting" when they determine it is time to make a checkpoint decision. If a negative comment, disagreement, or non-concurrence is pending, this should be identified at or before the checkpoint meeting. Throughout this MOU process, all Signatory Agencies share responsibility for providing informal 'heads up' of pending problems/potential issues so that the other agencies can begin to prepare for a mid-level elevation or other intervention before the formal responses are made. If a mid-level elevation appears likely, Caltrans should begin framing the elevation briefing paper, coordinating the development of the briefing paper with the Signatory Agencies, and scheduling the mid-level elevation during or immediately after the checkpoint meeting.
10. **Information Packet.** Caltrans is responsible for sending information packets to the Signatory Agencies at least 14 calendar days in advance of each checkpoint or coordination meeting. Information packets should identify critical issues of concern to the other Signatory Agencies. As Caltrans is preparing the information packet, issues should be identified and communicated informally to the Signatory Agencies.
11. **Caltrans Request for Response and Responding Agency Responses.** Following a checkpoint meeting, Caltrans will send the agencies a request for response. Upon receipt of a request for response, each agency that chooses to respond will send the response in writing or e-mail to Caltrans within 30 calendar days. The response will be a comment, agreement or disagreement. Additionally, the COE may submit a concurrence or non-concurrence at the LEDPA checkpoint

as specified in Table 1, *Types of Response by Agency and Checkpoint*. The response terms (comment, agree, disagree and for the COE, concur/non-concur) reflect the regulatory responsibilities of the Responding Agencies at different points in the NEPA and CWA Section 404 processes. Table 1 summarizes the only types of response an agency may give at a checkpoint.

Table 1. Types of Response By Agency And Checkpoint.

Agency	Purpose and Need	Alternatives	Preliminary LEDPA/CMP
COE	Agree/Disagree	Agree/Disagree	Concur/Nonconcur
EPA	Agree/Disagree	Agree/Disagree	Agree/Disagree
FWS	Comment	Agree/Disagree	Agree/Disagree
NMFS	Comment	Comment	Agree/Disagree

12. Types of Response. As summarized in Figure 2, *Coordination of Checkpoint Process*, the Responding Agency sends a formal **comment, agreement or disagreement**, (and the COE may also send a **concurrence or non-concurrence at the LEDPA checkpoint**) to the Transportation Agencies, as follows:

- (a) **Comments.** The Responding Agency provides written comments. If the agency does not respond within 30 calendar days, the Transportation Agencies cannot assume the Responding Agency has no comments, but may proceed. The Transportation Agencies are not required to address or resolve negative comments except as specified in paragraph 13. The Responding Agencies may request a mid-level elevation in writing at the time they respond. The Transportation Agencies also may choose to resolve the issue or may choose to use the elevation process.
- (b) **Agreement/Disagreement.** The Responding Agency provides a written response agreeing or disagreeing with the Transportation Agencies' checkpoint proposal. The Responding Agency's letter must identify the basis for the disagreement. If the Responding Agency does not respond within 30 calendar days, the Transportation Agencies cannot assume the Responding Agency agrees but may proceed. In the case of a disagreement, the Transportation Agencies must convene a mid-level elevation. If the mid-level elevation does not resolve the issues, the Transportation Agencies at their discretion may: (i) continue to attempt to resolve the problem through other forms of dispute resolution (such as continued elevation or use of a facilitator), (ii) may proceed without resolution, or (iii) may proceed while concurrently attempting to resolve the problem. If the Transportation Agencies choose to move on, any Responding Agency may concurrently request a senior-level elevation within seven calendar days of notification by Caltrans of the decision to proceed. The senior-elevation group will decide whether or not they wish to review the issue.

(c) **Concurrence/Non-concurrence by the COE.** The COE provides a written response concurring or non-concurring with the LEDPA checkpoint proposal. The COE letter must identify the basis for non-concurrence. If the COE does not respond within 30 calendar days, the Transportation Agencies may initiate the mid-level elevation. If Caltrans receives a non-concurrence from the COE, the Transportation Agencies may not proceed until the issues are resolved. The COE's response at the preliminary LEDPA/conceptual mitigation checkpoint is the only use of concurrence/non-concurrence except as described in paragraph 15 of this Section. FHWA may not issue the final EIS until the COE concurs.

13. **Closure at Each Checkpoint.** At each checkpoint, Caltrans will send the Signatory Agencies a letter identifying the status of each issue that received a negative comment, disagreement, or non-concurrence. This letter will be sent before the next checkpoint, before the draft EIS is issued, before the final EIS is issued, or within 90 days, whichever is sooner. If a mid-level elevation has been triggered, and resolution is reached prior to the mid-level elevation, Caltrans will send notification to the Signatory Agencies.
14. **Mid-level elevation.** The procedure for the mid-level elevation is described in Section IV.
15. **Cooperating Agencies.** FHWA recognizes that the COE is the lead federal agency for the CWA Section 404 permitting process. As such, the COE is encouraged to become a cooperating agency on Integration Projects. As a cooperating agency, the COE could more efficiently adopt the NEPA document for their CWA Section 404 permitting decision and, therefore, it becomes a concurring agency for all checkpoints in developing joint NEPA documents. Because 23 USC 139(f) reaffirmed FHWA's authority as the Federal lead agency to determine the purpose and need and range of alternatives for FHWA's NEPA documents, concurrence by the COE only signifies that FHWA's NEPA document is satisfactory for CWA Section 404 purposes.

Section IV. Elevation Procedures and Other Project-Specific Dispute Resolution Tools
Elevation, as necessary, is encouraged. Stale disputes are as hard on the overall process as they are on the development of an individual project. The elevation process is intended to resolve issues quickly and to maintain constructive working relationships. This section provides an overview of the project-specific dispute resolution tools available under this MOU. Detailed guidance and recommendations are available in Appendix A. In keeping with the spirit of the integration process, nothing in this section precludes any other traditional or nontraditional approaches to dispute resolution.

1. **Flexibility.** The project-specific dispute resolution tools are intended to be expeditious, practical, and accessible. All the tools are available at any point on a voluntary basis. However, the mid-level elevation is required for disagreements or non-concurrences. For these, the briefing paper should be used as described in

Appendix A. The mid-level elevation may be used any time (including outside the checkpoints) all the Signatory Agencies agree it would be effective.

2. **Representatives for Elevation.** When the Transportation Agencies initiate the NEPA/404 integration process, they will request that each Responding Agency identify the appropriate mid-level and senior-level representatives who may speak for their agency in an elevation should the need arise. The senior-level representative should include the top regional/state decision-maker for each agency, or their designee. This request will come with the first information packet distributed regarding purpose and need.
3. **The Mid-level Elevation.** The mid-level elevation is a tool to resolve disagreement or non-concurrence at a checkpoint. Though the Responding Agencies should have given Transportation Agencies informal notice prior to and at the checkpoint meeting, the formal trigger for a mid-level elevation is the receipt by Caltrans of a letter of disagreement or non-concurrence as described in Section III.12(b) and (c). Upon receiving the letter, the Transportation Agencies have 30 calendar days to convene a mid-level elevation. Convening a mid-level elevation requires Caltrans to:
 - (a) Notify and schedule the managers who will resolve the dispute and the staff who will brief them;
 - (b) Coordinate, develop, and distribute an elevation briefing paper; and
 - (c) Arrange for a neutral facilitator, as necessary.
4. **Briefing Paper.** A collaboratively prepared briefing paper is a key component of the mid-level elevation and is recommended for subsequent elevation to senior managers if the latter elevation is determined to be necessary. The briefing paper should be sent to the mid-level managers along with a draft agenda at least 10 calendar days prior to the mid-level elevation. The briefing paper should follow the standard format as discussed in Appendix A.
5. **Senior-level elevation.** If the mid-level elevation does not result in resolution, the Signatory Agencies may raise the issue to the senior management as discussed in Section III.12(a)-(b). Eventually, an issue may need to enter the more formal dispute resolution system developed by the Department of Transportation.¹

Section V. Continuous Improvement

The signatories to this MOU are committed to continuous improvement of the integration process. The foundation for continuous improvement is information from project tracking; the monitoring plan, described below; and the elevations.

¹ The Department of Transportation Order 5611.1A (October 10, 2003) establishes procedures for elevating disputes involving environmental review of highway and mass transit projects to the Secretary of Transportation. The procedures are designed to address significant interagency disputes among Federal agencies or State agencies with federally delegated authority.
http://environment.fhwa.dot.gov/strmlng/DOT5611_order.htm

1. **Continuous Improvement Group (CIG).** Each Signatory Agency will appoint one representative and an alternate representative to the CIG. The initial composition of the group is listed in Appendix B. This group is responsible for reviewing the monitoring information and recommending improvements to the integration process.
2. **Convener.** Caltrans will convene meetings of the CIG unless other arrangements are made by mutual agreement. Caltrans will draft and distribute an agenda as well as chair the meetings.
3. **Monitoring.** The effectiveness of the integration process will be measured by tracking project characteristics and timelines, surveys of most or all agency participants who have participated in the checkpoint processes, and information from the mid-level elevations. Surveying occurs at each checkpoint and at the final EIS. Caltrans will implement the monitoring process and the CIG will oversee it.
4. **Frequency of Reviews.** Once sufficient data is collected, presumably within a year of signing this MOU, Caltrans will distribute metric and survey results, along with a draft agenda for a continuous improvement meeting. For the following two years, the CIG may meet frequently, if needed, to adapt the integration process based on the monitoring results and elevations. Eventually, the CIG will meet a minimum of once a year, unless all the Signatory Agencies agree that the meeting is not necessary. Any of the Signatory Agencies may request a meeting.
5. **Policy Issues.** As well as adapting the integration process, the CIG may identify policy issues that emerge as the root cause of recurring disputes, and may raise these issues with the appropriate agency or agencies.

Section VI. Tiering

Applying this integration process to a Tier 1 EIS may be appropriate for some projects. If so, the approach outlined in this section is recommended.

Modification of the NEPA/404 Integration Process for Tiered Projects. A NEPA Tier 1 evaluation will not result in the submittal of a CWA Section 404 permit application. However, in general, it is anticipated that a Tier 1 evaluation will result in a Tier 2 project subject to this MOU that will require a permit from the COE. Therefore, the NEPA/404 integration process will be modified for Tier 1 to reflect programmatic decisions made at Tier 1, and to anticipate the permit application requirements at Tier 2. The NEPA/404 integration process for Tier 2 will follow the standard procedure outlined in Section III of the MOU.

The Tier 1 (modified) and Tier 2 (standard) NEPA/404 integration processes are similar in many respects. Both processes include the same checkpoints. The main difference between the Tier 1 and Tier 2 NEPA/404 integration processes occurs at the last checkpoint. In Tier 2, the Transportation Agencies seek Responding Agency comment, agreement or COE concurrence on the LEDPA and the conceptual mitigation plan for the

LEDPA. In Tier 1, however, the Transportation Agencies seek Responding Agency comment, agreement or COE concurrence on the alternative (corridor) *most likely to contain the LEDPA*, and on the *general framework for mitigation*.

All other elements of the standard NEPA/404 integration process apply, unless otherwise indicated.

Section VII. Local Planning

Although transportation planning and programming occur prior to the NEPA process, the Signatory Agencies recognize the importance of early identification and consideration of environmental concerns in conjunction with land use and transportation planning. Such early consideration will facilitate the NEPA/404 integration process, and will lead to better transportation project decisions. FHWA has provided guidance on this subject in their document, "Linking the Transportation and NEPA Processes" (February 2005). See this document on the web at

<http://nepa.fhwa.dot.gov/ReNepa/ReNepa.nsf/0/9fd918150ac2449685256fb10050726c?OpenDocument>

In addition, SAFETEA-LU supports early consideration of environmental concerns in local and regional transportation planning. SAFETEA-LU requires that Regional Transportation Plans include a discussion of potential environmental mitigation activities and sites to carry out the activities. This discussion is to be developed by the Metropolitan Planning Organization in consultation with environmental resource and regulatory agencies. See this document on the web at <http://www.fhwa.dot.gov/safetealu/index.htm>

Section VIII. Legal Force and Effect/Modification

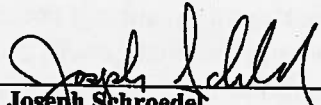
1. The NEPA/404 integration process does not include all environmental review and permitting requirements. Recently enacted 23 USC 139(f) reaffirmed FHWA's authority as the lead federal transportation agency, to determine purpose and need and range of alternatives for FHWA's NEPA documents. The EPA has authority under the Clean Air Act Section 309 to review and comment on the NEPA documents of other Federal agencies. This is independent of EPA's role in the NEPA/404 integration process. Specific approvals not addressed by this MOU include, but are not limited to, the following: Endangered Species Act compliance, CWA Section 401 water quality certification, Coastal Zone Management Act consistency determination, National Historic Preservation Act Section 106 compliance, and Department of Transportation Act Section 4(f) compliance. However, the signatories are committed to ensuring that these other permit and approval requirements be integrated into the overall NEPA Process.
2. The new SAFETEA-LU section 6005 permits future delegation of a number of FHWA's NEPA responsibilities to Caltrans. Under section 6005 (23 USC 327), Caltrans may assume the full responsibilities of FHWA with respect to one or more highway projects within California (23 USC 327(a)(2)(A)), including those requiring EAs and EISs, except Caltrans may not assume FHWA's responsibilities for Clean Air Act conformity determinations or those imposed on

FHWA by 23 USC 134 and 135 (Metropolitan and Statewide Planning). Under either statute, a delegation of FHWA responsibilities to Caltrans would be set out in a separate MOU between the two parties. Accordingly, the Signatory Agencies agree that Caltrans would assume the responsibilities of FHWA under this MOU for any Integration Project delegated to Caltrans pursuant to either 23 USC 326 or 327.

3. Regulatory and resource agency participation in this process does not imply endorsement of all aspects of a transportation plan or project. Nothing in this MOU is intended to diminish, modify, or otherwise affect the statutory or regulatory authorities of the Signatory Agencies.
4. A Signatory Agency's participation in the integration process is not equivalent to serving as a cooperating agency, which is a separate process established through a formal written agreement from a Signatory Agency to the lead federal agency.
5. This MOU is not a fiscal or funds obligation instrument. Nothing in this MOU will be construed as affecting the authorities of the participants to act as provided by statute or regulation or as binding beyond their respective authorities or to require the participants to obligate or expend funds in excess of available appropriations.
6. This MOU does not confer any right or benefit, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.
7. Any Signatory Agency may terminate participation in this MOU upon written notice to all other Signatory Agencies. If all Signatory Agencies decide not to participate in this agreement any further, the FHWA will provide written documentation to all Signatory Agencies that the MOU is terminated.
8. On a project-specific basis, any Signatory Agency may opt out of applying this agreement upon written notice to all other Signatory Agencies.
9. This MOU will become effective on the date of the last signature.
10. Modifications.
 - (a) **Specific Integration Project.** Each of the timelines and methods specified in this MOU may be modified for a specific project upon agreement of all the Signatory Agencies. Agreement must be in writing and can be communicated by letter or by e-mail.
 - (b) **MOU.** Any Signatory Agency or the CIG may propose modifications to this MOU. Note that it is preferable to have the CIG discuss and propose changes.

- (c) **Modification Procedure.** Proposals for modification of a specific Integration Project or to the MOU will be circulated to all Signatory Agencies for review and comment. The agencies will have 30 calendar days from receipt of the proposed modification(s) to submit comments. The CIG and the Signatory Agency proposing the change will coordinate and decide who will be responsible for circulating the proposal and collecting and compiling the comments. The proposing agency will also be responsible for circulating the comments and resolving any issues if possible. Upon written acceptance of a proposal by all Signatory Agencies, Caltrans will circulate a revised MOU for execution.
- (d) The amended MOU will become effective 15 calendar days after execution by the last Signatory Agency and will supercede any previous version of the MOU.

Section IX. Signatures



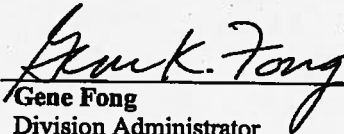
Joseph Schroeder
Brigadier General, U.S. Army
Commander, South Pacific Division
U.S. Army Corps of Engineers

8 May 2006
Date



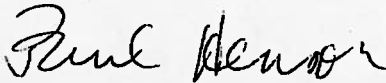
Wayne Nasri
Regional Administrator
U.S. Environmental Protection Agency, Region IX

MAY 15, 2006
Date



Gene Fong
Division Administrator
Federal Highway Administration, California Division

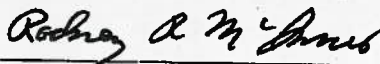
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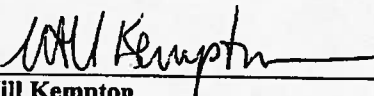
Steve Thompson
Manager, California/Nevada Operations Office
U.S. Fish and Wildlife Service

MAY 04 2006
Date



Rodney R. McInnis
Regional Administrator
National Marine Fisheries Service, Southwest Region
(Control # SWR-072)

4-13-06
Date



Will Kempton
Director
California Department of Transportation

4/13/06
Date

Appendix A. Dispute Resolution System

The Briefing Paper

At every mid-level elevation, staff of each of the Signatory Agencies involved in the dispute will prepare a collaborative briefing paper. This paper may also be used for senior-level elevations. The briefing paper should offer salient information precisely framing the issues requiring resolution. The briefing paper:

- Encourages neutral presentation of issues, rather than polarizing;
- Maximizes the likelihood of resolution of at least some of the issues as staff prepare for the elevation;
- Ensures that the problem statement is robust, clear, and focused; and
- Fosters improved communication.

The briefing paper should be short and will need to be developed quickly – in 21 calendar days in most cases. A format for the briefing paper is presented below.

Ideally, the issues to be addressed in the briefing paper should be framed at the checkpoint meeting. Caltrans should begin the first draft shortly after the checkpoint meeting. Once the Responding Agencies reply formally to Caltrans' request for responses, Caltrans will complete the first draft of the briefing paper and send it to all the Signatory Agencies. A person from each agency responsible for the development of the briefing paper (a point of contact) should be identified informally at the checkpoint meeting, if possible, and formally in the response letter.

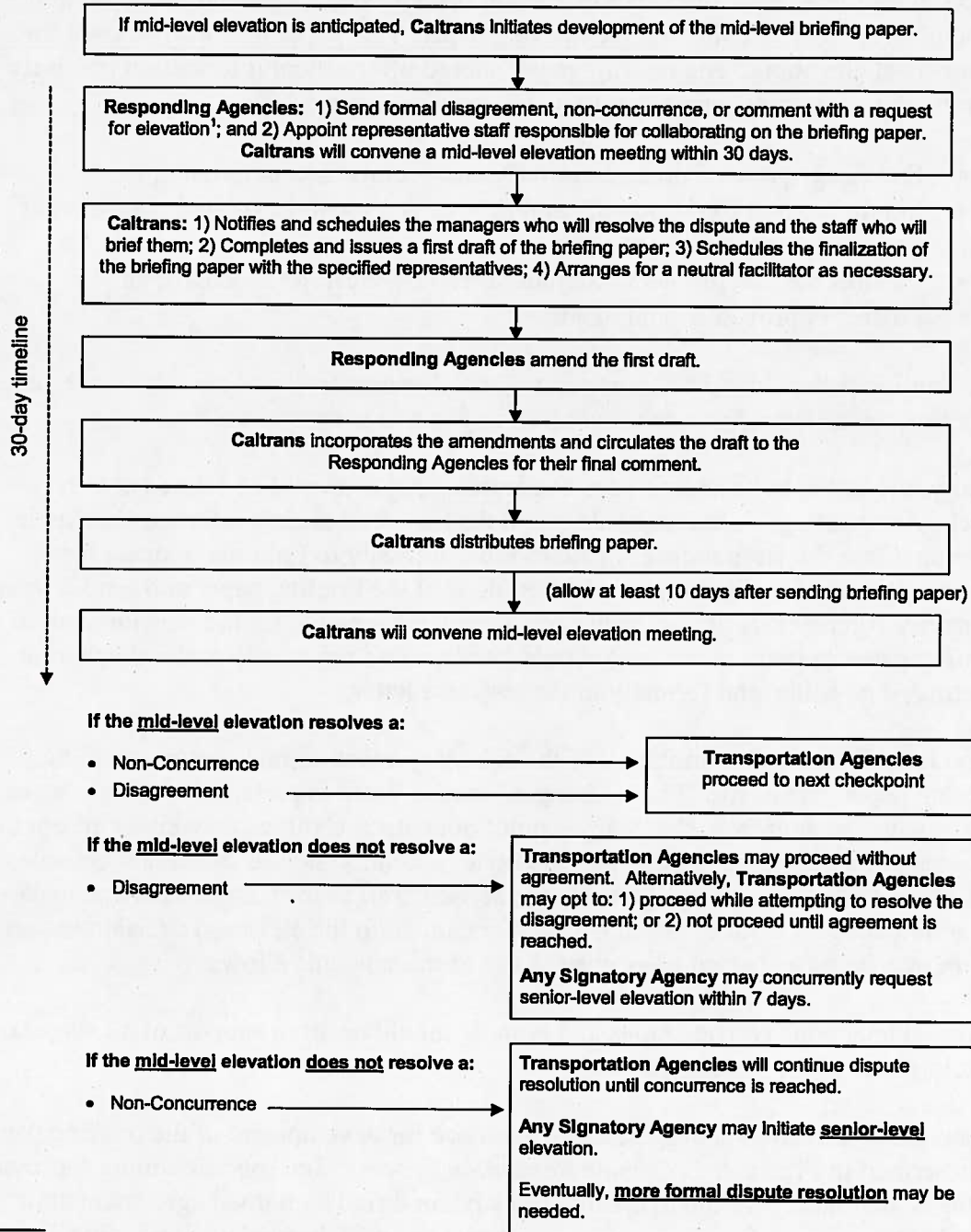
Upon receipt of the first draft, any of the signatory agencies may contribute to the briefing paper; use of the "Track Changes" tool in Word is preferred. A single set of changes will be sent by each agency's point of contact. Caltrans may either accept the changes or move them to one of the 'alternate' columns and this document becomes the second draft. Caltrans then distributes the second draft to the contributors and makes requested changes prior to sending a final document to the elevation decision-makers. There may be other iterations as needed and as the schedule allows.

Informal telephone conversations and e-mails should occur in support of all stages of the development of the briefing paper.

When a mid-elevation is triggered, the sequence for development of the briefing paper is as described in Figure A-1, *Dispute Resolution Process*. The specific timing for reviews, changes, and incorporation of changes may be modified by mutual agreement at or shortly after the checkpoint meeting, or whenever a mid-level elevation is first anticipated.

Figure A-1. Dispute Resolution Process

Note: This process includes informal communication among all participants in the briefing paper process.



¹ Caltrans may deny requests for mid-level elevation that are sent as part of a comment.

Figure A-2. Sample Briefing Paper

Project Name:		
Checkpoint:		
As the briefing paper is developed, alternate views that are not easily incorporated into the main body of the document can be dropped into columns on the right, and sized to fit in whatever way makes graphic sense. If the alternate view columns prove to be unnecessary, they can be taken out.	Alternate comments	Alternate comments
Background:		
Issue 1: A Word or Phrase Naming the Issue. A succinct summary. Ideally, the list of issues will have been sketched out at the checkpoint meeting. QA: At the end of the summary of the issue, end with a question. This helps keep the decision-makers in the elevation focused. QB: Sometimes within an issue there is more than one question. For instance, there might be a question about whether an alternative is practicable or not, and there might be a separate question about which agency ought to make the determination on a specific technical issue.		
Issue 2: A Word or Phrase Naming the Second Issue. A succinct summary. Q:		
Resolution:		
Issues Still Requiring Resolution:		
Dates: Checkpoint meeting ____/____/____; Request for Response ____/____/____; Negative assessment or non-concurrence ____/____/____; Mid-level elevation; ____/____/____; Resolution ____/____/____.		

Use of Facilitators

The use of a facilitator may be an effective way to conduct a coordination meeting, checkpoint meeting, or elevation. Here are some approaches to involving facilitators that have been useful in the past:

The process for hiring the facilitator should be as collaborative as practicable. Involving agencies in the selection of a facilitator sets a neutral tone from the outset.

Involve the facilitator in the development of the agenda.

Strike the right balance in terms of substantive knowledge. A facilitator who has to stop and ask 'What is Section 404 of the CWA?' is likely to bog things down. Yet it is not necessary to find someone who knows the details of the transportation process and each of the statutes and all of the regulations. It is probably more important that the facilitator be truly skilled at facilitation and have a general natural resources background.

Be creative about finding and retaining a facilitator. Identifying and hiring a facilitator on short notice can be a challenge, but not an insurmountable one. Many of the agencies participating in this MOU have trained facilitators who could assist with the meeting or elevation. To access an external facilitator, the participating agencies (including the local transportation agency, if applicable) should explore the available funding and contracting options to expedite the contracting process. The U.S. Institute for Environmental Conflict Resolution maintains a roster of qualified facilitators who can be easily accessed by many federal agencies.

**Appendix B. Composition of the Original
Continuous Improvement Group**

Agency	Delegate	Alternate
Caltrans	Sheila Mone	Muggs Stoll
COE	Susan Meyer	David Castanon
EPA	Nova Blazej	Tim Vendlinski
FHWA	Maiser Khaled	David Tedrick
NMFS	Dick Butler	Dan Logan
FWS	Michael Hoover	Mark Littlefield

Report of the Commission of the
Government of the District of Columbia

1897	1898	1899	1900	1901	1902	1903	1904	1905	1906	1907	1908	1909	1910	1911	1912	1913	1914	1915	1916	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075	2076	2077	2078	2079	2080	2081	2082	2083	2084	2085	2086	2087	2088	2089	2090	2091	2092	2093	2094	2095	2096	2097	2098	2099	2100	2101	2102	2103	2104	2105	2106	2107	2108	2109	2110	2111	2112	2113	2114	2115	2116	2117	2118	2119	2120	2121	2122	2123	2124	2125	2126	2127	2128	2129	2130	2131	2132	2133	2134	2135	2136	2137	2138	2139	2140	2141	2142	2143	2144	2145	2146	2147	2148	2149	2150	2151	2152	2153	2154	2155	2156	2157	2158	2159	2160	2161	2162	2163	2164	2165	2166	2167	2168	2169	2170	2171	2172	2173	2174	2175	2176	2177	2178	2179	2180	2181	2182	2183	2184	2185	2186	2187	2188	2189	2190	2191	2192	2193	2194	2195	2196	2197	2198	2199	2200	2201	2202	2203	2204	2205	2206	2207	2208	2209	2210	2211	2212	2213	2214	2215	2216	2217	2218	2219	2220	2221	2222	2223	2224	2225	2226	2227	2228	2229	2230	2231	2232	2233	2234	2235	2236	2237	2238	2239	2240	2241	2242	2243	2244	2245	2246	2247	2248	2249	2250	2251	2252	2253	2254	2255	2256	2257	2258	2259	2260	2261	2262	2263	2264	2265	2266	2267	2268	2269	2270	2271	2272	2273	2274	2275	2276	2277	2278	2279	2280	2281	2282	2283	2284	2285	2286	2287	2288	2289	2290	2291	2292	2293	2294	2295	2296	2297	2298	2299	2300	2301	2302	2303	2304	2305	2306	2307	2308	2309	2310	2311	2312	2313	2314	2315	2316	2317	2318	2319	2320	2321	2322	2323	2324	2325	2326	2327	2328	2329	2330	2331	2332	2333	2334	2335	2336	2337	2338	2339	2340	2341	2342	2343	2344	2345	2346	2347	2348	2349	2350	2351	2352	2353	2354	2355	2356	2357	2358	2359	2360	2361	2362	2363	2364	2365	2366	2367	2368	2369	2370	2371	2372	2373	2374	2375	2376	2377	2378	2379	2380	2381	2382	2383	2384	2385	2386	2387	2388	2389	2390	2391	2392	2393	2394	2395	2396	2397	2398	2399	2400	2401	2402	2403	2404	2405	2406	2407	2408	2409	2410	2411	2412	2413	2414	2415	2416	2417	2418	2419	2420	2421	2422	2423	2424	2425	2426	2427	2428	2429	2430	2431	2432	2433	2434	2435	2436	2437	2438	2439	2440	2441	2442	2443	2444	2445	2446	2447	2448	2449	2450	2451	2452	2453	2454	2455	2456	2457	2458	2459	2460	2461	2462	2463	2464	2465	2466	2467	2468	2469	2470	2471	2472	2473	2474	2475	2476	2477	2478	2479	2480	2481	2482	2483	2484	2485	2486	2487	2488	2489	2490	2491	2492	2493	2494	2495	2496	2497	2498	2499	2500	2501	2502	2503	2504	2505	2506	2507	2508	2509	2510	2511	2512	2513	2514	2515	2516	2517	2518	2519	2520	2521	2522	2523	2524	2525	2526	2527	2528	2529	2530	2531	2532	2533	2534	2535	2536	2537	2538	2539	2540	2541	2542	2543	2544	2545	2546	2547	2548	2549	2550	2551	2552	2553	2554	2555	2556	2557	2558	2559	2560	2561	2562	2563	2564	2565	2566	2567	2568	2569	2570	2571	2572	2573	2574	2575	2576	2577	2578	2579	2580	2581	2582	2583	2584	2585	2586	2587	2588	2589	2590	2591	2592	2593	2594	2595	2596	2597	2598	2599	2600	2601	2602	2603	2604	2605	2606	2607	2608	2609	2610	2611	2612	2613	2614	2615	2616	2617	2618	2619	2620	2621	2622	2623	2624	2625	2626	2627	2628	2629	2630	2631	2632	2633	2634	2635	2636	2637	2638	2639	2640	2641	2642	2643	2644	2645	2646	2647	2648	2649	2650	2651	2652	2653	2654	2655	2656	2657	2658	2659	2660	2661	2662	2663	2664	2665	2666	2667	2668	2669	2670	2671	2672	2673	2674	2675	2676	2677	2678	2679	2680	2681	2682	2683	2684	2685	2686	2687	2688	2689	2690	2691	2692	2693	2694	2695	2696	2697	2698	2699	2700	2701	2702	2703	2704	2705	2706	2707	2708	2709	2710	2711	2712	2713	2714	2715	2716	2717	2718	2719	2720	2721	2722	2723	2724	2725	2726	2727	2728	2729	2730	2731	2732	2733	2734	2735	2736	2737	2738	2739	2740	2741	2742	2743	2744	2745	2746	2747	2748	2749	2750	2751	2752	2753	2754	2755	2756	2757	2758	2759	2760	2761	2762	2763	2764	2765	2766	2767	2768	2769	2770	2771	2772	2773	2774	2775	2776	2777	2778	2779	2780	2781	2782	2783	2784	2785	2786	2787	2788	2789	2790	2791	2792	2793	2794	2795	2796	2797	2798	2799	2800	2801	2802	2803	2804	2805	2806	2807	2808	2809	2810	2811	2812	2813	2814	2815	2816	2817	2818	2819	2820	2821	2822	2823	2824	2825	2826	2827	2828	2829	2830	2831	2832	2833	2834	2835	2836	2837	2838	2839	2840	2841	2842	2843	2844	2845	2846	2847	2848	2849	2850	2851	2852	2853	2854	2855	2856	2857	2858	2859	2860	2861	2862	2863	2864	2865	2866	2867	2868	2869	2870	2871	2872	2873	2874	2875	2876	2877	2878	2879	2880	2881	2882	2883	2884	2885	2886	2887	2888	2889	2890	2891	2892	2893	2894	2895	2896	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